

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK (MANHATTAN)

In Re:

Chapter - 7

Case No. 10-13377(JMP)

LUKE THOMPSON,

Debtor.

**OBJECTION TO DEBTOR'S NOTICE OF COMPLIANCE
AND INTENT TO CURE PRE-PETITION JUDGMENT OF
POSSESSION PURSUANT TO 11 U.S.C. SEC. 362(b)(22) AND 362 (I)**

PLEASE BE ADVISED THAT 1010 Sixth Associates LLC, (the "Lessor") the Lessor of 66 West 38th Street, Apartment #44C, New York, NY 10018 (the "Apartment") which the Debtor currently occupies, as and for its opposition to Debtor's Notice of Compliance and Intent to Cure Pre-Petition Judgment of Possession Pursuant to 11 U.S.C. § 362(b)(22) and 362 (I) ("Notice of Compliance") states the following:

1. Debtor was the rent stabilized tenant of the Apartment.
2. Lessor served a Notice to Cure dated October 21, 2009 upon Debtor alleging certain breaches of the subject lease, including that the Debtor permitted five (5) unauthorized occupants to live in the Apartment and had installed pressurized walls in the Apartment, which violated the Fire Code and Building Code and created a danger to the health and safety of the Building's occupants.
3. The Notice to Cure advised Debtor that if he failed to cure the lease violations on or before November 9, 2009 then the Lessor would elect to terminate the tenancy in accordance with the applicable provisions of the law.

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GOLDSTEIN,
ALTSCHULER,
NAHINS &
GOIDEL, P.C.
377 BROADWAY
NY, NY 10013-3993
(212) 431-1300

4. Debtor failed to comply with the Notice to Cure by removing the pressurized walls installed in the Apartment.
5. Thereafter, Lessor served a Notice of Termination dated November 10, 2009 upon Debtor, terminating Debtor's tenancy, effective November 25, 2009.
6. Thereafter, Lessor commenced a Summary Holdover Proceeding in Civil Court, New York County.
7. In the context of the Summary Proceeding, Lessor moved to direct Debtor to pay use and occupancy *pendente lite*.
8. By Order dated March 29, 2010, Lessor's Motion was granted on default and Debtor was directed to pay \$13,713.00 and April rent without prejudice by April 14, 2010 and to pay use and occupancy *pendente lite* for the entire proceeding. (A copy of this Decision/Order is annexed to this Objection as Exhibit A.)
9. Debtor never paid the money directed to be paid by the court; later in the context of the Summary Proceeding, the Court rendered an order dated May 4, 2010, which now, *inter alia*, directed the payment of \$18,259.00. (A copy of this Order is annexed hereto as Exhibit B.)
10. In furtherance of the May 4, 2010 Order, the Court also signed a Decision and Judgment granting a Judgment of Possession in favor of Lessor and against Debtor, and the illegal occupants, and a money judgment in the amount of \$18,259.00. (A copy of this Decision/Judgment is annexed hereto as Exhibit C.)

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11. The Decision/Judgment also directed the issuance of a warrant forthwith, upon which Lessor could execute in the event that the \$18,259.00 was not paid by May 17, 2010.
12. When the aforesaid payment was not made, a Notice of Eviction dated June 23, 2010 was served on the Debtor. (A copy of this Notice of Eviction is annexed hereto as Exhibit D.)
13. On the eve of eviction, the Debtor filed the instant bankruptcy proceeding.
14. It is not at all certain that the Civil Court would vacate the warrant of eviction upon Debtor's payment of \$18,259.00, since there is now additional use and occupancy due and owing to the Lessor.
15. In any event, it is clear that pursuant to the court's March 2010 Order, Debtor was to pay use and occupancy *pendente lite* for the entire proceeding.
16. Debtor's deposit of one dollar is therefore insufficient to comply with the Civil Court's clear directive that use and occupancy is due, in at least the amount of the last monthly lease rent of \$4,546.00.
17. Furthermore, the Bankruptcy Code requires post-petition use and occupancy payments.
18. Debtor is therefore not in compliance with 11 U.S.C. Sec. 362(l)(1).

PLEASE BE FURTHER ADVISED THAT the address listed for the Lessor on the Notice of Compliance is incomplete and needs modification.

PLEASE BE FURTHER ADVISED THAT in the event that the clerk is authorized to send any payment by Debtor to the Lessor, the clerk should send such

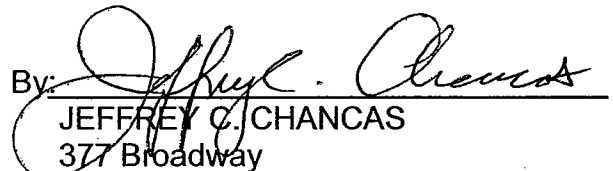
payment to the Lessor at the following current mailing address:

1010 Sixth Associates, LLC
c/o Rose Associates, Inc.
200 Madison Avenue – 5th Floor
New York, New York 10016
Attn: Arlene Valentine

Dated: New York, NY
July 14, 2010

Yours, etc.

BORAH, GOLDSTEIN, ALTSCHULER,
NAHINS & GOIDEL, P.C.
Attorneys for Lessor
1010 Sixth Associates LLC

By: 
JEFFREY C. CHANCAS
377 Broadway
New York, New York 10013
(212) 431-1300

TO: LUKE THOMPSON
Debtor, *Pro Se*
66 West 38th Street – Apt. 44C
New York, NY 10018

LUKE THOMPSON
Debtor, *Pro Se*
689 Stony Hill Road - #4
Yardley, PA 19067

ROBERT L. GELTZER, ESQ.
Chapter 7 Trustee
THE LAW OFFICES OF ROBERT L. GELTZER
1556 Third Avenue – Suite 505
New York, NY 10128
(212) 410-0100

OFFICE OF THE UNITED STATES TRUSTEE
33 Whitehall Street - 21st Floor
New York, New York 10004
(212) 510-0500

BORAH,
GOLDSTEIN,
ALTSCHULER,
NAHINS &
GOIDEL, P.C.
377 BROADWAY
NY, NY 10013-3993
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Exhibit A

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK
HOUSING PART F, RM. 830
MARCH 29, 2010

INDEX NO. 098989/2009
MOTION SEQUENCE NO. 002

1010 SIXTH ASSOCIATE LLC
PETITIONER(S)
AGAINST
THOMPSON LUKE
RESPONDENT(S)

DECISION/ORDER

PRESENT:

Lebovits
JUDGE

RECITATION, AS REQUIRED BY CPLR 2219(A), OF THE PAPERS CONSIDERED IN THE
REVIEW OF THIS MOTION OF PETN REQ DIRECTING RESP TO PAY ALL RETRO U/S.

PAPERS

NUMBERED

NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....	_____
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED....	_____
ANSWERING AFFIDAVITS.....	_____
REPLYING AFFIDAVITS.....	_____
EXHIBITS.....	_____
STIPULATIONS.....	_____
OTHER.....	_____

UPON THE FOREGOING CITED PAPERS, THE DECISION/ORDER IN THIS MOTION IS
AS FOLLOWS:

NAR at 11:00 a.m. Motion granted on default. Respondent
~~to pay \$13,713 and April rent without prejudice~~
to pay \$13,713 and April rent without prejudice
by April 14, 2010. Use + occupancy pendente lite for the
entire proceeding also granted and to be paid by respondent.
Petitioner to serve respondent with a copy of this
order. Case already adjourned to 4/14/10 at 9:30am,
PTF, Rm 830.

3/29/10.

DATE

JUDGE, CIVIL/HOUSING COURT

HON. GERALD LEBOVITS

ADJOURNMENTS

Exhibit B

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK
HOUSING PART F, RM. 830
APRIL 26, 2010

INDEX NO. 098989/2009
MOTION SEQUENCE NO.: 006

1010 SIXTH ASSOCIATES LLC
PETITIONER(S),
AGAINST
THOMPSON LUKE
RESPONDENT(S)

DECISION/ORDER

PRESENT:

GERALD LEBOVITS
JUDGE

RECITATION, AS REQUIRED BY CPLR 2219(A), OF THE PAPERS CONSIDERED IN THE
REVIEW OF THIS OSC TO VACATE DEFAULT JUDGMENT/RESTORE TO THE CALENDAR

PAPERS

NUMBERED

NOTICE OF MOTION AND AFFIDAVITS ANNEXED.....
ORDER TO SHOW CAUSE AND AFFIDAVITS ANNEXED....
ANSWERING AFFIDAVITS.....
REPLYING AFFIDAVITS.....
EXHIBITS.....
STIPULATIONS.....
OTHER.....

UPON THE FOREGOING CITED PAPERS, THE DECISION/ORDER IN THIS MOTION IS
AS FOLLOWS:

Default vacated (Interest at
2 1/2% as provided by 7/17/10
order) and 3/29/10 default
vacated 2/5/11. As a condition
to vacating the default, respondent
to pay \$18,259 by 5/17/10
(with interest to the amount
of Petitioner's 440 Highway
rental is \$10,588.46 - which part
may seek at trial). Court judgment

DATE

JUDGE, CIVIL/HOUSING COURT

ADJOURNMENTS

5/7/10

That procedure is followed by
X for 5/17/10

Exhibit C

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK PART
DECISION AND JUDGMENT

INDEX # 098989/2009
JUDGMENT SEQ # 002

1010 SIXTH ASSOCIATES LLC,

Petitioner(s)

AGAINST
THOMPSON, LUKE
CONDIT, ANDRE
DOE, JOHN
DOE, JANE

Respondent(s)

Decision and judgment is rendered based upon
a decision made after a hearing on a motion as follows:

Judgment of possession is granted in favor of:

1010 SIXTH ASSOCIATES LLC,
and against

THOMPSON, LUKE
CONDIT, ANDRE
DOE, JOHN
DOE, JANE

A counterclaim is granted in favor of the respondent in the amount of \$0.00
(which if not being entered separately is offset and reflected in the
total amount due, listed below.)

A money judgment is hereby granted, along with cost and disbursements
in the amount of \$0.00 in favor of:

1010 SIXTH ASSOCIATES LLC,
and against

THOMPSON, LUKE
CONDIT, ANDRE
DOE, JOHN
DOE, JANE

for a total amount of \$18259.00

(Monthly use and occupancy is set at \$0.00 per month, as per order,
stipulation or decision in record.)

Warrant to issue forthwith

Execution

Date

5/4/10

HON. GERALD LEBOVITS

Judge, Civil/Housing Court

Exhibit D

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

1010 SIXTH ASSOCIATES LLC.

against

THOMPSON, LUKE &
66 W. 38TH ST.
APT#: 44C
NEW YORK

NY 10018

"John and Jane Doe"

Name of Tenant and/or undertenant being fictitious and unknown, person intended,
occupying apartment set forth below.

INDEX NO. LT 98989/09
MARSHAL'S DOCKET NO. 372185
RESIDENTIAL

Petitioner
Landlord

Respondent
Tenant

Respondent
Undertenant



CITY MARSHAL

DANNY M. WEINHEIM #3
SUITE 504
2432 GRAND CONCOURSE
BRONX, NY 10458
(718) 295-3333

NOTICE OF EVICTION

Alternative Service / Mailing

To the above named tenants and undertenants:

Please take notice that the Court has issued a warrant for your eviction. If you fail to vacate the described premises, **YOU MAY BE EVICTED, WITHOUT FURTHER NOTICE, ON THE SIXTH BUSINESS DAY AFTER THE DATE OF THIS NOTICE** or on any business day thereafter. "Business days" are Monday through Friday except legal holidays.

The **ONLY** way you can stop this eviction is if a Court issues an order to show cause that stays your eviction. You may apply for such an order at the Civil Court, Landlord - Tenant part, in your borough.

If a Court stay of your eviction is in effect, you will be evicted only if the stay ends or is vacated by the Court. If the Court has already ordered that you may be evicted if you fail to make a payment or comply with the Court's order by a certain date, your failure to pay or comply with the Court's order by that date may result in your eviction without further notice.

If you are dependent upon a person in the military service of the United States, advise the clerk of the Court immediately in order to protect your rights.

If you need legal assistance, the Legal Aid Society may be able to assist you (check telephone listing in your borough). A senior citizen who needs legal assistance may contact the New York City Department for the Aging, 2 Lafayette Street, New York, New York 10007, (212) 442-1000.

If you receive public assistance, notify your caseworker immediately. The Human Resources Administration may be able to help you with back payments whether or not you receive public assistance. Call (877) 472-8411 for information.

DATE OF NOTICE:

FECHADA

6/23/10

Fomerly known as "72-hour notice." Additional time has been allowed for mailing.
Anteriormente conocido como "Aviso de Desahucio de 72 Horas." Se ha concedido tiempo adicional para enviar por correo.
The date of this notice shall be on or after the date the notice is mailed to the respondent.
La fecha de este notificacion se fijara el dia en que se le envia al apelado o despues de ese dia.

NOTIFICACION DE DESAHUCIO

Notificación Alternativa / Postal

A los susodichos inquilinos y sub-inquilinos:

Tenga a bien notar que la Corte ha emitido una orden de desahucio en contra de usted. Si no desaloja al local descrito, **USTED PUEDE SER DESHAUCIADO, SIN NOTIFICACION ADICIONAL, EL SEXTO DIA HABIL A PARTIR DE LA FECHA DE ESTA NOTIFICACION** o en cualquier dia habil de ahi en adelante. Los "dias habiles" son Lunes a Viernes, excepto los dias de fiesta legales.

Usted puede detener este desahucio **SOLAMENTE** si una Corte emite una orden judicial instruyendole a usted a mostrar motivos justificantes para suspender su desalojo. Usted puede solicitar esa orden (Order to Show Cause) en la Corte Civil, Seccion del Proprietario - Inquilino (Civil Court, Landlord - Tenant part) en su condado.

Si una suspension de su desahucio por orden de la Corte esta en efecto, usted sera desalojado solo si la suspension caduca o la Corte la anula. Si la Corte ha ordenado ya que usted puede ser desalojado si no cumple con hacer un pago o con la orden de la Corte a partir de una fecha de vencimiento, su incumplimiento con el pago o con la orden de la Corte al llegar esa fecha puede resultar en su desahucio sin notificacion adicional.

Si usted depende de una persona que pertenece al Servicio Militar de los Estados Unidos, notifiquesele inmediatamente al Secretario de la Corte (Court Clerk) para asi proteger sus derechos legales.

Si usted necesita ayuda legal, la Legal Aid Society tal vez puede ayudarlo (consulte la guia telefonica de su condado). Una persona de edad avanzada que necesita ayuda legal puede comunicarse con el Departamento para Personas Mayores de la Ciudad de Nueva York, 2 Lafayette Street, New York, New York 10007, (212) 442-1000.

Si usted recibe asistencia publica, notifiquelo a su trabajador social (caseworker) inmediatamente. La Administracion de Recursos Humanos tal vez puede ayudarlo con los pagos atrasados, reciba usted o no asistencia publica. Llame al (877) 472-8411 para informacion.

C

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JEFFREY C. CHANCAS, being duly sworn, deposes and says:

1. I am not a party to this action; I am over 18 years of age and I reside in New York County.

2. On July 14, 2010, I served the within OBJECTION TO DEBTOR'S NOTICE OF COMPLIANCE AND INTENT TO CURE PRE-PETITION JUDGMENT OF POSSESSION PURSUANT TO 11 U.S.C. SEC. 362(b)(22) AND 362(l) upon:

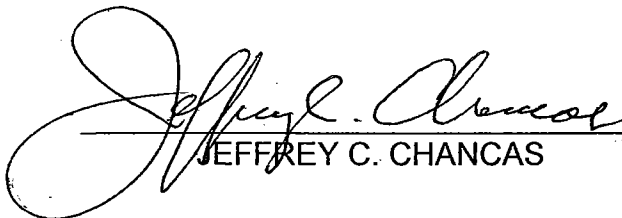
LUKE THOMPSON
66 West 38th Street – Apt. 44C
New York, NY 10018

LUKE THOMPSON
689 Stony Hill Road - #4
Yardley, PA 19067

ROBERT L. GELTZER, ESQ.
Chapter 7 Trustee
THE LAW OFFICES OF ROBERT L. GELTZER
1556 Third Avenue – Suite 505
New York, NY 10128

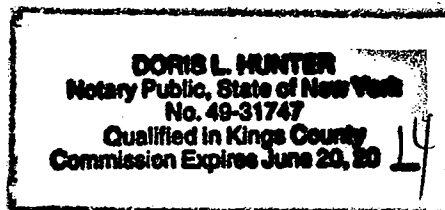
OFFICE OF THE UNITED STATES TRUSTEE
33 Whitehall Street - 21st Floor
New York, NY 10004

at the addresses designed by said party(s)/attorney(s) for that purpose by depositing true copy(s) of same enclosed in postpaid, properly addressed wrappers, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.


JEFFREY C. CHANCAS

Sworn to before me this
14 day of July, 2010


Notary Public



BORAH,
GOLDSTEIN,
ALTSCHULER,
NAHINS &
GOIDEL, P.C.
377 BROADWAY
NY, NY 10013-3993
(212) 431-1300

ATTORNEY'S CERTIFICATION

STATE OF NEW YORK, COUNTY OF

The undersigned, an attorney admitted to practice in the State of New York, does hereby certify, pursuant to Section 2105 CPLR, that I have compared the within

with the original and have found it to be a true and complete copy thereof.

Dated: 200

.....
Type or Print Name Below Signature

NOTICE OF ENTRY OR SETTLEMENT

(check and complete appropriate box and section)

Sir(s) / Madam(s):

PLEASE TAKE NOTICE that a

of which the within is a (true) (certified) copy

☐ NOTICE OF ENTRY

was duly entered in the within named court on 200

☐ NOTICE OF SETTLEMENT

will be presented for settlement to the Hon.

one of the judges of the within named court at the Courthouse at

on 200

at o'clock M.

Dated: 200

Yours, etc.,

BORAH, GOLDSTEIN, ALTSCHULER,
NAHINS & GOIDEL, P.C.

Attorney(s) for

Office and Post Office Address

377 BROADWAY

NEW YORK, NY 10013-3993

(212) 431-1300

FAX NUMBER: (212) 334-0960

To:
Attorney(s) for

Index No. 10-13377 (JMP) Year 200

Chapter - 7

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

LUKE THOMPSON,

Debtor.

**OBJECTION TO DEBTOR'S NOTICE OF COMPLIANCE
AND INTENT TO CURE PRE-PETITION JUDGMENT OF
POSSESSION PURSUANT TO 11 U.S.C. SEC. 362(b)(2)
AND 362(i)**

BORAH, GOLDSTEIN, ALTSCHULER,
NAHINS & GOIDEL, P.C.

Attorney(s) for and/or, 1010 Sixth Associates, LLC

Office and Post Office Address

377 BROADWAY

NEW YORK, NY 10013-3993

(212) 431-1300

FAX NUMBER: (212) 334-0960

Please refer all communications

To: Jeffrey C. Chancas

Ext. 611

Esq.

OR:

Ext.

Esq.

To:

Attorney(s) for

ADMISSION OF SERVICE

The undersigned acknowledges receipt of a copy of the within

on 200

at o'clock M.

Attorney(s) for

by:

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK
COUNTY OF

I am not a party to this action; I am over 18 years of age; I reside at

200 I served

being sworn, says:
the within
upon

the attorney(s) for in this
action, at

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

.....
Type or Print Name Below Signature

Sworn to before me
this day of 200